

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

KYLE B. RICHARDS,

Plaintiff,

Case No. 2:20-cv-122

v.

Hon. Hala Y. Jarbou

GRETCHEN WHITMER, et al.,

Defendants.

ORDER

This is a civil rights action brought by a state prisoner. The Court dismissed the case and entered judgment on May 8, 2023. Before the Court is Plaintiff's motion for leave to proceed *in forma pauperis* on appeal (ECF No. 200).

This Court granted Plaintiff leave to proceed *in forma pauperis* when he initiated this case. Although Rule 24(a)(3) of the Federal Rules of Appellate Procedure permits a party to proceed *in forma pauperis* on appeal if they were allowed to so proceed in the district court, there is an exception to that rule where "a statute provides otherwise." Fed. R. App. P. 24(a)(3)(B).

Here, the "three-strikes rule" in 28 U.S.C. § 1915 provides that a prisoner may not proceed *in forma pauperis* on appeal

if the prisoner has, on 3 or more occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g).

In more than three of Plaintiff's lawsuits, the Court has entered dismissals because the actions were frivolous, malicious, or failed to state a claim. *See, e.g., Colar v. Hienz*, No. 1:12-1197 (W.D. Mich. Mar. 5, 2013); *Colar v. Heyns*, No. 1:12-cv-1269 (W.D. Mich. Jan. 13, 2013);

Richards v. Smith, No. 1:11-cv-10929 (E.D. Mich. May 16, 2011); *Richards v. Swartz et al.*, No. 2:10-cv-13759 (E.D. Mich. Oct. 14, 2010); *Richards v. Schuster*, No. 2:10-cv-10100 (E.D. Mich. July 8, 2010). Consequently, the Court has denied Plaintiff leave to proceed *in forma pauperis* in many cases because he has “three strikes.” *See, e.g., Richards v. Washington*, No. 2:20-cv-146 (W.D. Mich. Jan. 14, 2021), *aff’d*, *Richards v. Washington*, Nos. 20-2161/2272 (6th Cir. May 5, 2021).

Plaintiff does not contend that he falls within the “imminent danger” exception to the three-strikes rule. Consequently, that rule prohibits him from proceeding *in forma pauperis* on appeal.

Accordingly,

IT IS ORDERED that Plaintiff’s motion for leave to proceed *in forma pauperis* on appeal (ECF No. 200) is **DENIED**.

IT IS FURTHER ORDERED that Plaintiff has twenty-eight (28) days from the date of entry of this order to pay the entire filing fee for appealing a civil action, which is \$505.00, to the Clerk of this Court. Plaintiff’s failure to comply with the order may result in the dismissal of his appeal without prejudice by the Sixth Circuit Court of Appeals.

Dated: May 23, 2023

/s/ Hala Y. Jarbou
HALA Y. JARBOU
CHIEF UNITED STATES DISTRICT JUDGE